

**United States Department of Labor
Employees' Compensation Appeals Board**

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 06-1257
Issued: March 8, 2007**

Appearances:
Ron Krumie, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2006 appellant, through her representative, filed a timely appeal of a February 1, 2006 merit decision of the Office of Workers' Compensation Programs terminating her compensation and authorization for medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective February 1, 2006 on the grounds that she had no further employment-related disability; and (2) whether the Office properly terminated authorization for medical benefits.

FACTUAL HISTORY

On July 22, 1999 appellant, then a 44-year-old mail processor, filed a claim for a traumatic injury to her right hand occurring on July 20, 1999 when she pulled a muscle while grasping a large handful of mail. She did not stop work. The Office accepted appellant's claim

for right extensor tendinitis, bilateral de Quervain's tendinitis and medial and lateral epicondylitis of the right elbow.

On March 28, 2000 Dr. Jerry A. Taylor, an osteopath, performed a tenosynovectomy and tendolysis of the abductor pollicis longus and extensor pollicis brevis tendon in the first dorsal compartment of the right wrist. Following the surgery appellant returned to limited-duty employment on June 16, 2000.

On July 10, 2000 appellant filed an occupational disease claim alleging that she sustained tendinitis due to factors of her federal employment. The Office assigned the case File No. 090455698 and accepted the claim for left arm tendinitis. The Office combined this case into File No. 090455698.

The Office accepted that appellant sustained a recurrence of disability on August 5, 2000. Based on the opinion of Dr. Saul Z. Forman, a Board-certified psychiatrist, the Office also accepted that appellant sustained chronic pain syndrome due to her July 20, 1999 employment injury.¹

In a report dated February 15, 2002, Dr. Taylor diagnosed status post surgery for de Quervain's tenosynovitis of the right wrist, bilateral lateral humeral epicondylitis and capsulitis of the trapezoid first metacarpal joint on the right side. He found that appellant could work light duty and listed work restrictions.

By letter dated September 10, 2002, the Office referred appellant to Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated September 25, 2002, Dr. Pollak related:

"I did review the rather extensive notes issued by Dr. Forman, dated October 27, 2000 which indicate rather severe psychiatric problems which preclude [appellant] from working, at least at that time. I was not able to confirm the remainder of the diagnoses other than [c]hronic [p]ain [s]yndrome which, by definition, implies a nonorganic etiology. Therefore, on a musculoskeletal basis, based on today's examination, I see no indication for work restrictions."

On November 5, 2002 the Office referred appellant for a second opinion evaluation with Dr. Elliott Wolf, a Board-certified psychiatrist. In a report dated November 20, 2002, Dr. Wolf diagnosed a personality disorder with borderline features unrelated to her employment. He found that appellant had no employment-related psychiatric condition. In a work capacity evaluation dated December 22, 2002, Dr. Wolf opined that she could work eight hours per day at her usual employment. In a supplemental report dated February 13, 2003, he indicated that he was unaware that appellant was diagnosed with chronic pain syndrome which he noted "implies a psychogenic rather than medical basis for one's pain."

¹ In a report dated October 27, 2000, Dr. Forman diagnosed recurrent major depression with psychotic features, panic disorder with agoraphobia and a mood disorder due to numerous musculoskeletal problems with depressive features. He stated, "In my opinion [appellant] has a chronic pain disorder associated with depression" and noted that she attributed her problems to her employment injury.

By letter dated March 11, 2003, the Office requested that Dr. Pollak address whether appellant had residuals of her employment injuries and the extent of any disability. In a response dated March 20, 2003, he stated that she had no residuals of her accepted conditions of “right extensor tendinitis, right medial and lateral humeral epicondylitis, left arm tendinitis, right arm surgery and bilateral de Quervain’s tendinitis.” Dr. Pollak opined that appellant could perform her usual employment.

On April 17, 2003 the Office requested that Dr. Wolf clarify whether appellant had residuals of her accepted condition of chronic pain syndrome. On August 20, 2003 he opined that Dr. Forman could respond more accurately to the Office’s questions.

By letter dated September 25, 2003, the Office requested that Dr. Taylor review and discuss Dr. Pollak’s reports. On October 1, 2003 he reported that he based his diagnosis of lateral humeral epicondylitis on appellant’s complaints of pain rather than objective findings. Dr. Taylor found that she could perform light duty.

The Office notified appellant that a conflict existed between Dr. Taylor and Dr. Pollak on the issue of the nature and extent of her work-related disability. It referred her to Dr. Ronald Rusko, a Board-certified plastic surgeon, for an impartial medical examination. In a report dated April 6, 2004, Dr. Rusko discussed her history of injury and listed findings on physical examination. He stated:

“On clinical examination I find that there is a gross overreaction on [appellant’s] part. I cannot find any specific evidence of any tendinitis in the upper extremities including epicondylitis and de Quervain syndrome. [Appellant] has diffuse tenderness but provocative measures do not reproduce pain to make any diagnosis of any tendinitis.”

Dr. Rusko opined that appellant’s tendinitis had resolved but recommended an electromyogram (EMG) to evaluate other sensory disturbances.

An EMG performed on April 22, 2004 revealed bilateral carpal tunnel syndrome (CTS). In a report dated April 30, 2004, Dr. Rusko diagnosed bilateral CTS of uncertain etiology, possibly due to obesity. He found that appellant required work restrictions due to CTS. In a work restriction evaluation dated May 10, 2004 and supplemental report dated May 11, 2004 he found that she required no work limitations due to her accepted conditions, but required limitations due to carpal tunnel syndrome. On May 21, 2004 Dr. Rusko stated that “since [appellant] was a poor historian, I cannot state whether this is a work-related condition or not because I have no idea when this had started, whether she was working or not working.”

The Office referred appellant to Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated July 6, 2004, Dr. Xeller diagnosed status post de Quervain’s release, mild bilateral CTS and resolved bilateral epicondylitis. He found that appellant had “recovered from her de Quervain’s tendinitis with a negative Finkelstein’s test” and that she had no residuals of her epicondylitis. Dr. Xeller attributed the CTS to “her age, gender and exogenous obesity, rather than any work[-]related condition, given

she has not worked in nearly four years and her symptoms continue.” Dr. Xeller listed work restrictions for her nonemployment-related CTS.

The Office requested that Dr. Taylor comment on Dr. Xeller’s report; however, in a response dated August 30, 2004, Dr. Taylor indicated that he would “not be drawn into a possible confrontation” with another physician.

On November 30, 2004 the Office referred appellant to Dr. Forman for another second opinion evaluation. In a report dated December 7, 2004, he diagnosed paranoid schizophrenia, possible chronic schizophrenia, a mood disorder due to somatic problems, possible major depressive disorder with psychosis, panic disorder with agoraphobia and a personality disorder. Dr. Forman noted that there was conflicting evidence regarding whether appellant had residuals of her employment injury. He stated:

“My visual examination noted that [appellant] walked with a limp, would not use her right hand, complained of severe pain in her right shoulder and entire right arm and pain in her left hand; this is the only evidence I can provide to explain how it supports a diagnosis of mood disorder secondary to medical conditions. I believe that her condition has not returned to its baseline.”

Dr. Forman opined that appellant was unable to work because of “residuals of her chronic pain which she perceives as her primary problem. Appellant is further disabled by her underlying disorders of thought and mood, which are of permanent nature.”

In a progress report dated December 21, 2004, Dr. Taylor diagnosed bilateral lateral humeral epicondylitis, tenosynovitis of the flexor pollicis longus tendon and medial humeral epicondylitis of the right elbow. He indicated that the diagnosed conditions were employment related and listed work restrictions.

By letter dated April 14, 2005, the Office referred appellant to Dr. Jeffrey Hall, a Board-certified surgeon, to resolve a conflict between Dr. Taylor and Dr. Xellar on the issue of whether she had any further work-related condition or disability on the issue of whether she had carpal tunnel syndrome. In a report dated May 6, 2005, Dr. Hall reviewed the medical records and discussed appellant’s complaints. On physical examination, he noted negative Spurling and Finkelstein maneuvers and objective findings of “two incisions, one at the base of the right thumb, the other in the metacarpal phalangeal joint crease volarly of the same thumb. There is some mild postoperative swelling of the right thumb.” Dr. Hall diagnosed resolved right wrist de Quervain’s tendinitis and resolved bilateral medial and lateral epicondylitis. He further diagnosed nonemployment-related arthritis of the trapeziometacarpal joint, tenosynovitis of the right thumb and bilateral CTS. He stated:

“I do not believe there is any residual regarding [appellant’s] medial or lateral bilateral epicondylitis or her right de Quervain’s tendinitis. She still has multiple complaints in these areas but there are no objective findings. All provocation maneuvers for all of these tend[ons] are negative.

“With regard to [appellant] carpal tunnel syndrome, from my review of the records it seems that her EMG became positive after she was off work. With the

EMG also positive four years after being off work, it is my opinion that other factors are the cause of her CTS. This would include [appellant's] significant obesity.”

Dr. Hall listed prophylactic work restrictions.

On May 24, 2005 the Office requested that Dr. Forman address whether appellant had any diagnoses due to her employment injury. In a report dated June 22, 2005, he reviewed the recent medical evidence, including Dr. Hall's May 6, 2005 report. Dr. Forman noted that Dr. Hall found no objective findings of the accepted conditions. He asserted, “ I do not find that any of the emotional diagnoses are related to work prior to the injury or accelerated, aggravated or precipitated them.”

On December 20, 2005 the Office notified appellant that it proposed to terminate her compensation and authorization for medical benefits on the grounds that the weight of the medical evidence established that she had no further employment-related disability or condition.

In a progress report dated January 10, 2006, Dr. Taylor listed findings of a positive Tinel's test and Phalen's sign. He diagnosed bilateral CTS, lateral humeral epicondylitis and early degenerative osteoarthritis of the first metacarpal joint. Dr. Taylor opined that appellant required work restrictions.

Appellant requested a schedule award on January 11, 2006.

By decision dated February 1, 2006, the Office terminated appellant's entitlement to compensation, including a schedule award and authorization for medical benefits effective that date.²

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

² Appellant requested an oral hearing on February 26, 2006. She appealed her case to the Board on May 8, 2006. A hearing representative issued a decision on November 13, 2006 affirming the February 1, 2006 Office decision. Under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990), the Office's November 13, 2006 decision, issued while the Board had jurisdiction over the matter in dispute, is null and void. *Lawrence Sherman*, 55 ECAB 359 (2004).

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵ The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral de Quervain's tendinitis, right extensor tendinitis, right medial and lateral humeral epicondylitis, left arm tendinitis and chronic pain syndrome due to factors of her federal employment. Appellant underwent right wrist surgery on March 28, 2000 and returned to limited-duty employment on June 16, 2000. She stopped work on August 5, 2000 and received compensation from the Office for total disability.

The Office determined that a conflict in medical opinion existed between Dr. Taylor, appellant's attending physician, and Dr. Pollak, an Office referral physician, regarding whether appellant had any residuals of her accepted physical conditions. The Office referred appellant to Dr. Rusko for an impartial medical examination. In a report dated April 6, 2004, Dr. Rusko opined that she had no further residuals or disability due to her epicondylitis and de Quervain's syndrome. He found, however, that appellant had bilateral CTS. On May 21, 2004 Dr. Rusko indicated that he was unable to determine whether her CTS was related to her employment.

The Office referred appellant to Dr. Xeller for a second opinion examination to further develop whether her carpal tunnel syndrome was due to her federal employment. In a report dated July 6, 2004, Dr. Xeller found that appellant had no residuals or disability from her de Quervain's tendinitis or bilateral epicondylitis. He related her CTS to her age and obesity and not her employment.

The Office again found that a conflict remained regarding appellant's work limitations between Dr. Taylor and Dr. Xeller and referred her to Dr. Hall for an impartial medical examination. The Board finds that the opinion of Dr. Hall, a Board-certified surgeon, selected to resolve the conflict in opinion is based on a proper factual and medical background, is well rationalized and supports that appellant's disability due to her accepted employment injuries of right epicondylitis and right de Quervain's tendinitis ceased by February 1, 2006. Dr. Hall provided a thorough discussion of the factual and medical history and accurately summarized the

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

⁷ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

relevant medical evidence. Additionally, he provided a proper analysis of his findings on examination and reached conclusions about appellant's condition which comported with his findings.⁸ In his May 6, 2005 report, Dr. Hall discussed her complaints and reviewed the medical evidence of record. He listed objective findings of thumb incisions and mild joint swelling of the right thumb. Dr. Hall found that appellant had no further residuals due to her lateral bilateral epicondylitis or right de Quervain's tendinitis. He provided rationale for his opinion by explaining that appellant had no objective findings on physical examination supporting these conditions. Dr. Hall found that she could work with prophylactic restrictions. As his report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner and is sufficient to meet the Office's burden of proof to establish that appellant had no further disability due to her accepted physical conditions of right epicondylitis and right de Quervain's tendinitis.⁹

The Board notes that the record contained no conflict in opinion regarding whether appellant sustained bilateral CTS due to employment factors at the time of her referral to Dr. Hall. Dr. Taylor, appellant's attending physician, did not diagnose employment-related CTS prior to Dr. Hall's report. Dr. Hall diagnosed CTS which he attributed to nonemployment-related factors. He provided rationale for his opinion by explaining that appellant's EMG was positive four years after she stopped work and thus, attributed the cause to obesity or a systemic disorder. Dr. Hall's opinion, as an Office referral physician, is well rationalized and based on a thorough physical examination; thus, his opinion represents the weight of the evidence and establishes that appellant did not have employment-related CTS.

The remaining evidence of record submitted subsequent to Dr. Hall's report and prior to the Office's termination of compensation is insufficient to overcome the weight accorded him as the impartial medical examiner on the issue of whether appellant has any further residuals of her right epicondylitis or right de Quervain's tendinitis. Appellant submitted a report from Dr. Taylor dated January 10, 2006. Dr. Taylor diagnosed bilateral CTS, lateral humeral epicondylitis and early degenerative osteoarthritis of the first metacarpal joint. He asserted that appellant required work restrictions. Dr. Taylor's report, however, is insufficient to overcome the weight according the opinion of the impartial medical examiner or create a new conflict as he was on one side of the conflict resolved by the impartial medical examiner.¹⁰ Additionally, he did not attribute appellant's bilateral CTS to her employment injury and thus, his opinion is of little probative value on that issue.¹¹

The Board finds, however, that the Office improperly terminated appellant's compensation as Dr. Hall did not address whether she had any disability from her accepted conditions of right extensor tendinitis, left arm tendinitis and left epicondylitis. The Office accepted these conditions and has the burden to establish that disability from these conditions

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁰ *William Morris*, 52 ECAB 400 (2001).

¹¹ *Conrad Hightower*, 54 ECAB 796 (2003).

ceased prior to terminating benefits.¹² It is unclear from the record whether the Office provided Dr. Hall with a statement of accepted facts.¹³ As he did not address appellant's accepted conditions of right arm extensor tendinitis, left arm tendinitis and left epicondylitis, his report is insufficient to show that she had no further disability resulting from these conditions.

The Board further finds that the Office failed to establish that appellant had no further disability from her accepted condition of chronic pain syndrome. On December 7, 2004 Dr. Forman found that appellant was unable to work because of "residuals of her chronic pain, which she perceives as her primary problem." On June 22, 2005 Dr. Forman reviewed Dr. Hall's report and noted that Dr. Hall found no objective evidence of the accepted conditions. He concluded, "I do not find that any of the emotional diagnoses are related to work prior to the injury or accelerated, aggravated or precipitated them." Dr. Forman relied upon Dr. Hall's finding that appellant had no evidence of any accepted condition in finding that she had no residuals of her chronic pain syndrome. As discussed, however, Dr. Hall's opinion is insufficient to establish that appellant had no employment-related disability or residual condition due to her accepted conditions of right extensor tendinitis, left arm tendinitis and left de Quervain's tendinitis. Consequently, Dr. Forman's opinion is based on an inaccurate factual background.¹⁴ The Office's burden of proof to terminate benefits includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁵ As Dr. Forman's opinion is not based on an accurate factual background, his report is insufficient to establish that appellant had no further disability due to her chronic pain syndrome.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹⁷

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical treatment of appellant's right epicondylitis and right de Quervain's tendinitis based on the opinion of

¹² *David W. Pickett*, 54 ECAB 272 (2002).

¹³ The Office provides a physician with a statement of accepted facts to assure that the medical specialist's report is based upon a proper factual background. *Helen Casillas*, 46 ECAB 1044 (1995). The statement of accepted facts must include the claimed or accepted conditions. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

¹⁴ See *John W. Montoya*, 54 ECAB 306 (2003) (medical conclusions based on inaccurate or incomplete histories are of little probative value).

¹⁵ *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

¹⁶ *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹⁷ *Id.*

Dr. Hall, the impartial medical specialist, who found that appellant had no residuals of these conditions. He provided rationale for his findings by explaining that the findings on physical examination showed no evidence of any continuing right epicondylitis and right de Quervain's tendinitis.

The Board finds, however, that the Office failed to meet its burden of proof to terminate medical benefits for the accepted conditions of right arm extensor tendinitis, left epicondylitis and left arm tendinitis as Dr. Hall did not address whether appellant had any residuals of these conditions. The Office further failed to meet its burden of proof to terminate authorization for treatment of chronic pain syndrome as Dr. Forman based his opinion on an inaccurate history, that of appellant having no further residuals of her accepted physical employment injuries. His opinion, consequently, is insufficient to meet the Office's burden to show that appellant had no residuals of her employment-related condition requiring further medical treatment.¹⁸

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation and authorization for medical benefits effective February 1, 2006 on the grounds that she had no further employment-related disability or condition due to her accepted conditions of right epicondylitis and right de Quervain's tendinitis. The Board finds that the Office improperly terminated appellant's compensation and authorization for medical benefits for the accepted conditions of right arm extensor tendinitis, left arm tendinitis and left de Quervain's tendinitis.

¹⁸ See *Jaja K. Asaramo*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2006 is affirmed in part and reversed in part.

Issued: March 8, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board